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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/190,309	11/12/1998	DANIEL R. SCHNEIDEWEND	RCA89.041	6495

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EXAMINER

SALCE, JASON P

ART UNIT	PAPER NUMBER
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2421

MAIL DATE	DELIVERY MODE
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10/11/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/190,309	Applicant(s) SCHNEIDEWEND ET AL.	
	Examiner JASON SALCE	Art Unit 2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 20-38 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 20-38 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114 was filed in this application after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit or the commencement of a civil action. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 7/29/2011 has been entered.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 7/29/2011 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

Response to Arguments

Applicant's arguments filed 7/29/2011 have been fully considered but they are not persuasive.

Applicant has amended the claims to state a “current running time of day” as opposed to the previously claimed “current time of day”. The Examiner has reviewed the amendment and Applicant’s arguments corresponding to this amendment, however the Examiner notes that based on Applicant’s specification the scope of the claim has not changed and Young still reads on the claims. Therefore, the Examiner has upheld the rejection using Young in addition to applying a Res Judicata rejection (see below).

A current “running” time of time of day also refers to the time that needs to be updated in order to properly execute the processing function, as claimed. The board agreed that a current time of day corresponds to this interpretation based on Applicant’s own specification (**see Page 6 of BPAI Decision dated 5/31/2011**), which is updated with the corrected time of the broadcasting source to avoid errors in viewing or recording the program of interest. By now claiming a current “running” time of day, the same portion of Applicant’s specification would be used to define this term, which corresponds to the time correction embodiment of Young and provides no further scope change from the previously claimed “current time of day”. Applying the broadest reasonable interpretation would also provide an equivalent scope between a “current time of day” and a “current running time of day”, wherein the term “running” only defines the corrected “running” time of the scheduled broadcast. For example, if a baseball game runs late, the system of Young would provide a "current running time of day" adjustment used by the system of Young to recognize the program time change so that a processing function such as a recording is performed at the proper time. A user would then be provided an entire recording of the desired program and not the end of a

baseball game and the desired program. The BPAI agreed that Young teaches these limitations in view of Applicant's own specification (**see Pages 6-7 of the BPAI decision dated 5/31/2011**).

Res Judicata Rejection

New claims 20, 29 and 36 are rejected based on Res Judicata (**see MPEP 706.03(w)**).

MPEP 706.03(w) states that a Res Judicata rejection should be applied only when the earlier decision was a decision of the Board of Appeals or any one of the reviewing courts and when there is no opportunity for further court review of the earlier decision. This section of the MPEP also states that res judicata should be applied against the inventor on the same claim, a patentably nondistinct claim, or a claim involving the same issue.

The claims, as presented, generally mirror the limitations of claims 1-19, which Applicant cancelled after the decision rendered by the BPAI on 5/31/2011 affirming the Examiner's rejection of record, and do not further distinguish in any manner. Applicant has changed scope, if at all, to add non-limiting phrases previously considered by the BPAI, and the claims as a whole are therefore patentability nondistinct from the claims previously considered by the BPAI (**therefore presenting the same issues of record**).

The Examiner further notes that the same prior art of record previously used to reject prior claims 1-19 would be used to reject new claims 20, 29 and 36. Although Applicant has added the phase "current running time" in new claims 20, 29 and 36 from

Art Unit: 2421

"current time" in prior claims 1-19, the previously cited portions of the prior art references would be used to reject this claim limitation because the scope of "current running time" is equivalent to the "current time" claim limitation in prior claims 1-19 based on the teachings in Applicant's specification of the instant application (**see the Examiner's rebuttal above**). Therefore, the new claims 20, 29 and 36 present claims that are both patentably nondistinct and involving the same issue from prior claims 1-19.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 20-26, 28-33 and 35-38 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Young et al. (U.S. Patent No. 5,479,268).

Referring to claim 20, Young discloses receiving selection of (1) a first program from a first program source, (2) a second program from a second program source (**see Figure 1 for the first program NEWS coming from channel/source CNN and the second program Jane Wallace coming from channel/source LIF (Lifetime channel)**), (3) a first program processing function for the first program, (4) a second program processing function for the second program (**see Figure 2 and Column 5, Lines 37-38 and Column 7, Lines 24-30 for selecting programs to be recorded**).

Young also discloses synchronizing, prior to initiating the first program processing function, (1) a current running time of day used for scheduling the first program processing function, and (2) a current running time of day of a clock of the first program source (see Column 13, Lines 3-8 for providing a schedule update time/clock 230 update data that represents an updated current running time of day (from a first program source) for when a recording operation will be executed and Column 13, Lines 17-22 for synchronizing a system clock 230 (current running time of day of a first scheduling clock) with the requested/scheduled time (current running time of day of the clock of the first corresponding program source) in order to execute a recording operation). *The Examiner further notes that Young teaches that the system is capable of scheduling more than one television program for recording (see Figure 4) and therefore a first, second or even a third current running time of day clock of a first, second or third programming source, respectively, can be compared to a system clock or updated system clock 230 in order to execute a recording/program processing function. Further note that by comparing the two times/clocks to determine if a recording function should be initiated, the system inherently does so prior to initiation of the second program processing function, as claimed, because the recording function will not be executed if an affirmative comparison is made. Further note Figure 4, which shows that multiple programs on multiple channels can be scheduled for recording, therefore a first and second program with two*

different clocks from two different sources can provide information for synchronizing a scheduling clock.

Young also discloses initiating the first program processing function based on the scheduling clock (**see Column 13, Lines 17-22 for executing a recording function based on the scheduling clock**).

Young also discloses synchronizing, prior to initiating the second program processing function, (1) a current running time of day used for scheduling the second program processing function, and (2) a current running time of day of a clock of the second program source (**see Column 13, Lines 3-8 for providing a schedule update time/clock 230 update data that represents an updated current time of day (from a first program source) for when a recording operation will be executed and Column 13, Lines 17-22 for synchronizing a system clock 230 (current time of day of a first scheduling clock) with the requested/scheduled time (current time of day of the clock of the first corresponding program source) in order to execute a recording operation**). *The Examiner further notes that Young teaches that the system is capable of scheduling more than one television program for recording (see Figure 4) and therefore a first, second or even a third current time of day clock of a first, second or third programming source, respectively, can be compared to a system clock or updated system clock 230 in order to execute a recording/program processing function. Further note that by comparing the two times/clocks to determine if a recording function should be initiated, the system inherently does so prior to initiation of the second program processing function,*

as claimed, because the recording function will not be executed if an affirmative comparison is made. Further note Figure 4, which shows that multiple programs on multiple channels can be scheduled for recording, therefore a first and second program with two different clocks from two different sources can provide information for synchronizing a scheduling clock.

Young also discloses initiating the first program processing function based on the scheduling clock (**see Column 13, Lines 17-22 for executing a recording function based on the scheduling clock**).

Referring to claim 21, Young also discloses that the current running time of day used for scheduling the first program processing function is stored as a scheduling clock (**see Column 13, Lines 14-22 for copying a scheduled start time and length being copied from the schedule memory 232 to Record Memo RAM memory 236 and using this current running time of day as a schedule clock**).

Young also discloses that the current running time of day used for scheduling the second program processing function is also stored as the scheduling clock (**see Column 13, Lines 14-22 for copying a scheduled start time and length being copied from the schedule memory 232 to Record Memo RAM memory 236 and using this current running time of day as a schedule clock**).

Again note that the same updates to the system clock 230 are used to execute more than one designated recording function (**see the rejection of claim 1**).

Referring to claim 22, see the rejection of claim 21 and further note that when a first scheduled start time and length are copied to the Record Memo RAM 236 corresponding to a first processing function, a current running time of day is stored as a first scheduling clock and when a second scheduled start time and length are copied to the Record Memo RAM 236 corresponding to a second processing function, a current running time of day is stored as a second scheduling clock

Referring to claim 23, Young discloses simultaneously maintaining, for at least a period of time, both (1) the first scheduling clock, and (2) the second scheduling clock **(see Column 13, Lines 14-17 for storing recording requests in Record Memo RAM memory 236, therefore simultaneously storing recording requests up until the time the recording request is executed, a scheduling clock for a first and second recording request).**

Referring to claims 24-25, see the rejection of claims 20-23 for scheduling recording requests.

Referring to claim 26, Young also discloses terminating the second program processing function based on the current running time of day used for scheduling the second program processing function **(see Figure 23 and Column 5, Line 65 through Column 6, Line 15).**

Art Unit: 2421

Referring to claim 28, Young discloses receiving (1) first current time reference information from the first program source, and (2) a second current time reference information from the second program source (**see Column 13, Lines 3-8 for receiving current time references in the form of clock update data to set system clock 230**).

Young also discloses that synchronizing the current running time of day used for scheduling the first program processing function is based on the first current time reference information, and synchronizing the current running time of day used for scheduling the second program processing function is based on the second current time reference information (**see Column 13, Lines 17-22 for synchronizing the current running time for the recording function to the system clock 230**).

Referring to claims 29-33 and 35, see the rejection of claims 20-23, 26 and 28, respectively.

Referring to claim 36, see the rejection of claim 20.

Referring to claim 37, see the rejection of claims 21 and 23.

Referring to claim 38, see the rejection of claim 28.

Claims 27 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (U.S. Patent No. 5,479,268) in view of the Program and System

Art Unit: 2421

Information Protocol for Terrestrial Broadcast and Cable document (herein referred to as the ATSC document).

Referring to claim 7, Young the limitations of claim 20, but fails to teach that receiving information that comprises STT data of an MPEG compliant data stream.

The ATSC document teaches that current time reference information comprises a System Time Table (**SST**) data of an MPEG compliant data stream (**see Pages 1 and 11-12**).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the data transmitted from the servers in packetized form, as taught by Roop, to adhere to the MPEG standard with STT and EIT tables, for the purpose of providing a collection of hierarchically arranged tables for describing system information and program guide data (**see Page 11, Lines 1-2 of the ATSC document**).

Referring to claim 34, see the rejection of claim 27.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON SALCE whose telephone number is (571)272-7301. The examiner can normally be reached on M-F 9am-6pm.

Art Unit: 2421

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L. Kincaid can be reached on (571) 272-4063. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason Salce/
Primary Examiner, Art Unit 2421

Jason Salce
Primary Examiner
Art Unit 2421

September 28, 2011